

May, 11th 2020

No : 070/KNAKTP/Pimpinan/V/2020

Subject : Submission to CEDAW Committee Call for comments

To :

The Committee on the Elimination of Discrimination against Women

The Indonesian National Commission on Violence against Women (**Komnas Perempuan**) is one of the human rights mechanisms in Indonesia. It was established by Presidential Decree No. 181/1998, then strengthened with President Regulation No. 65 /2005. It is mandated to work for the fulfilment of women's rights and to create a situation conducive to the elimination of all forms of violence against women in Indonesia.

Regarding the Call for comments on **Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration**, we hereby submit our comments based on Komnas Perempuan's monitoring, fact findings and documentations of reported cases by our partner.

Hopefully you will find the comment contributing to the drafting process. Shall you need further information or clarification, please do not hesitate to contact us through our staff, Sondang Frishka, at frishka@komnasperempuan.go.id

Sincerely yours,

The image shows a handwritten signature in black ink over a circular official seal. The seal is purple and white, featuring the Garuda Pancasila emblem in the center. The text around the seal reads 'KOMISI NASIONAL ANTI KEKERASAN TERHADAP PEREMPUAN' at the top and 'INDONESIA' at the bottom, with 'NATIONAL COMMISSION ON VIOLENCE AGAINST WOMEN' written in smaller letters around the inner edge.

Satyawanti Mashudi

Board of transitional chairmanship

**Komnas Perempuan's Comments
to the Draft CEDAW General Recommendation
on Trafficking in Women and Girls in the context of Global Migration**

Komisi Nasional anti Kekerasan terhadap Perempuan (Komnas Perempuan) or National Commission on Violence Against Women is one of Indonesian national human rights institutions, focusing on building environment conducive to the elimination of all forms of violence against women and the fulfilment of women's human rights. It has the mandates of monitoring and facts finding, besides conducting research, educating public and addressing policy recommendation. Other than Indonesian Constitution, CEDAW and CAT are the two main conventions in Komnas Perempuan's statute referred to build framework in conducting its mandates.

KOMNAS PEREMPUAN acknowledges the comprehensiveness of this draft of General recommendation on Trafficking in Women and Girls in the Context of Global Migration. We particularly underline the need to recognize the multiple vulnerabilities faced by women to be trafficked and that the intersection of trafficking with other issues has resulted in the complexities of situation women victims of trafficking have to deal with, including in their search for justice and remedies.

Based on our monitoring findings, our inputs to the draft focuses on:

- a. Recognizing the vulnerability of women victims of violence to be criminalized in relation to the crimes committed as result of being trafficked, including but not limited to cases of trafficking linked with drug cartels/syndicate and sexual related crimes.
 - a1. Indonesian law still imposes capital punishment including on crimes of drug trades. Although the Indonesian law on anti-trafficking recognizes the vulnerabilities of victims to be abused to commit other crime and protects such victims from legal liability for the crime, there is a risk of prosecuted in the cases of drug trades, as confirmed in Komnas Perempuan's monitoring (2014) on situation of women detainees and prisoners. A prominent case of Mary Jane Veloso (MJV), a Philippine citizen who is also a victim of trafficking, exemplifies this vulnerability. Arrested with a total of 2,6 kg of heroin in her luggage, MJV was sentenced to death penalty by Indonesian court for drug smuggling in 2010. After a lengthy legal processes, she was scheduled to meet the execution in 2015. She was grant a postponement of execution due to a widespread support and currently is following the cases in the Philippine court as witness to the crimes committed by her traffickers. Nevertheless, this does not necessarily mean that she would be released.
 - a2. Creating and publishing sexual content is a crime in Indonesia according to the Law on Pornography and the Law on Information and Electronic Transaction. Komnas Perempuan has documented cases of women victims of trafficking who are facing

trial related to these two laws. The most current one is the case of PA, who was trafficked by her husband. She was offered online, forced to provide sexual service to strangers, including threesome, and was filmed during the sexual intercourse. The film was uploaded, and thus she was accused of violating the laws. Following their arrest, her husband was sick and later passed away with HIV positive status. PA case was continued and she was sentenced for 3 years imprisonment.

- b. The intersection of trafficking and the problem of enforced marriage, specifically child marriage and transnational marriage.
 - o Komnas Perempuan use the word “enforced” separately from “forced” marriage because in our findings both type of violence are present in Indonesia. The enforced marriage refers to arrange marriage in which the women (and girl) submissively agree to due to their subordinate position in the family and society, as well as their concern to assist the family financial situation by being married off. Whilst the forced marriage mostly will include the usage of force to some extent, such as being locked up, isolated or even physical and psychological abuse. The situation of enforced marriage is a grey area in relation to trafficking, but Komnas Perempuan notices cases of abuse, exploitation and negligence of the women and also economic gain for the family and the middle person (match-making agent).
- c. The intersection of trafficking and the issue of conflict, violent extremism and disaster.
 - o Komnas Perempuan’s monitoring on the situation of women in the context of conflicts and disaster recorded the vulnerability of women to trafficking. There are two patterns of trafficking of women in these contexts, namely (a) against women affected by the conflict and disaster and (b) to women from other places who was trafficked to the post conflict and disaster area since the recovery process attracts many outsiders to work on sites.
 - o Whilst Komnas Perempuan has not document a single case, we are aware of the vulnerability of women refugees to trafficking. Also, in the context of violent extremism of which support group is getting larger in the country.

Based on the concerns mentioned above, Komnas Perempuan recommends:

Insertion to Paragraph 2, last sentence:

.... Restrictive migration policies and over-reliance on the criminal justice system to address trafficking in women and girls are barriers for victims’ access to justice and other services including health, psychosocial and financial support.

Insertion of new paragraph 22

22. Women victims of trafficking are vulnerable to be criminalized in relation to the crimes committed as result of being trafficked, including but not limited to cases of trafficking linked with drug cartels/syndicate¹ and sexual related crimes. As emphasized by UN Women, “women’s

¹ See World Drug Report, UNDOC, Women and Drugs: Drug Use, Drug Supply and Their Consequences, 2018; Cornell Center on the Death Penalty Worldwide, Judge for More than Her Crime, 2018.

involvement in drug use and the drug trade reflects the decreased economic opportunities and lower political status that women face in everyday life. Since drug trade is commonly regulated as serious crime, hence according to the national law women victims of trafficking for drug trade purposes are at risks of lifetime imprisonment, and even, capital punishment. In countries where prostitution, pornography and publishing sexual content online is considered a crime, women victims of trafficking for sexual exploitation is at risk of imprisonment for her involvement in sexual related crimes.

Insertion to Paragraph 25 (c) iii

Its potential link with bonded labour, domestic servitude and child and forced and **enforced** marriage;²

Adding new paragraph of 25 (c) vi

vi Trafficking in the context of child marriage and transnational marriage, drug trades, sexual related crimes, violence extremism /terrorism and or armed conflict situation, and in post disaster context³.

Adding new Paragraph of 26 (b)

(b) Identifying and analysing the intersection issues between trafficking with child marriage and transnational marriage, drugs trades⁴, sexual related crimes, violent extremism and or armed conflict situation and in post disaster context⁵.

Insertion to Paragraph 29(c)

Has as its objective to combat trafficking for purposes of, among others, child and forced and **enforced** marriage, debt bondage, serfdom, forced or compulsory labour, slavery and sexual exploitation

Insertion to Paragraph 75

Ensure that trafficked women and girls are not, in any circumstances, held in immigration detention or other forms of custody and will not be detained, charged or prosecuted for irregular entry or stay in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims of trafficking, **including but not limited to drug trades, sexual related crimes and violent extremism acts.**

² para. 27(a),CEDAW/C/AFG/CO/1-2; para. 24(a), CEDAW/C/PAK/CO/4.

³ UN Security Council, S/PRST/2015/25

⁴ See UN Policy Brief on a gender perspective on the impact of drug use, the drug trade, and drug control regimes, 2014.

⁵ U.N. Security Council Resolution 2253 (2015) Threats to international peace and security caused by terrorist acts

